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Federal Communications Commission

DA 98-1419

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-84
Table of Allotments,)	RM-9021
FM Broadcast Stations.)	RM-9095
(Pauls Valley, Ratliff City, and Sulphur,)	
Oklahoma, Abilene, Bowie, Highland)	
Village, Mount Pleasant, and Overton, Texas) ¹)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 15, 1998

Released: July 17, 1998

By the Chief, Allocations Branch:

1. At the request of Tom Stamper ("Stamper"), the Commission has before it the Notice of Proposed Rule Making, 12 FCC Rcd 3500 (1997), proposing the allotment of Channel 291A to Pauls Valley, Oklahoma, as the community's second local FM and third aural broadcast service. In response to the Notice, Stamper and Suelou Broadcasting Company ("Suelou") filed comments expressing their intentions to apply for Channel 291A, if allotted to Pauls Valley.² In addition, comments and counterproposals were filed by Carter County Broadcasting ("Carter")³ and jointly by Bowie-Nacona Broadcasting Company, Inc., Dynamic Broadcasting, Inc. and East Texas Broadcasting Company, Inc. ("Bowie-Nacona, et al.")⁴.

2. Bowie-Nacona, et al. filed its joint counterproposal pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file

¹ The communities of Ratliff City and Sulphur, Oklahoma, and Abilene, Bowie, Highland Village, Mount Pleasant and Overton, Texas, have been added to the caption.

² After the record closed, both Stamper and Suelou filed comments withdrawing their interest in applying for Channel 291A at Pauls Valley. In accordance with Section 1.420(j) of the Commission's Rules, both parties state that they have not been paid or promised to be paid any consideration for the withdrawal of their expressions of interest. Accordingly, the Pauls Valley proposal will be dismissed in this proceeding.

³ After the record closed, Carter County filed a request to withdraw its counterproposal to allot Channel 291A to Ratliff City, Oklahoma, stating that it no longer is interested in applying for the channel, if allotted. In accordance with Section 1.420(j), it states that it has had no discussions with any party in this proceeding whereby it would be paid for the withdrawal. Accordingly, the counterproposal will be dismissed.

competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870, 4874 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). Specifically, Bowie-Nacona, licensee of Station KRJT-FM, Bowie, Texas, requests the substitution of Channel 264C for Channel 264C3 at Bowie, the reallocation of Channel 264C from Bowie to Highland Village, Texas, as the community's first local aural service, and the modification of the station's license to specify Highland Village as its community of license. East Texas Broadcasting Company, Inc., licensee of Station KPXI, Mount Pleasant, Texas, requests the substitution of Channel 264C2 for Channel 264C at Mount Pleasant, the reallocation of Channel 264C2 from Mount Pleasant to Overton, Texas, as the community's first local aural service, and the modification of Station KPXI's license accordingly. Dynamic Broadcasting, Inc., licensee of Station KORQ-FM, Channel 264C, Abilene, Texas, requests the substitution of Channel 263C for Channel 264C, at new transmitter site coordinates, and the modification of its license to specify the alternate Class C channel. Each of the licensees state their intention to apply for their respective channels, if allotted. To accommodate these changes, Bowie-Nacona, et al. states that Station KFXT(FM), Sulphur, Oklahoma, has agreed to downgrade its station from Channel 265C3 to Channel 291A. and specify a new transmitter site.

3. Bowie-Nacona, et al. states that the proposed allotment changes will serve the public interest and result in a preferential arrangement of allotments. Highland Village, with a 1990 U.S. Census population of 7,027 people, is located in Denton County, and lies within the Lewisville, Texas, Urbanized Area (population 79,433 people). In addition, it notes that the predicted 70 dBu contour will also encompass the Denton Urbanized Area. However, it states that Highland Village is entitled to a first local service preference. In support, Bowie-Nacona, et al. states that Highland Village is incorporated with a mayor/city council form of government. The local government includes a Director of Public Works, Police and volunteer Fire Departments, Utility, Park, Drainage and Maintenance Superintendents, Finance Director, Community Development Coordinator, Building Official, Planning and Zoning Commission, Park Board and Zoning Board of Adjustment. The community has its own taxing authority and bond rating. Public education is provided by the Lewisville Independent School District, with four of its schools located within Highland Village. Highland Village also has civic organizations such as the Highland Village Women's Club, Keep Highland Village Beautiful, The Newcomer's Club and various scout troops. Bowie-Nacona, et al., states that local employment is provided by the 57 businesses located within Highland Village. Finally, it states that the Highland Village Lion's Club holds an annual Balloonfest and Fair which attracts crowds of up to 30,000 people. Bowie-Nacona, et al., states that upgrading Station KRJT from a Class C3 to a Class C, at the transmitter site which it proposes, would result in a gain in population served of from 29,674 persons at present to 2,155,202 persons, and a gain in coverage area from its present 4,636 square kilometers to 26,475 square kilometers. Bowie, on the other hand, has a population of 4,990 persons, and will retain local aural service from co-owned daytime-only AM Station KRJT.

4. Station KPXI, Mount Pleasant, Texas, requests the substitution of Channel 264C2 for Channel 264C, the reallocation of the lower class channel to Overton, Texas, as the community's

first local aural service, and the modification of Station KPXI's license to specify Overton as its community of license. Bowie-Nacona, et al. states that Overton has a population of 2,105 persons. Further, while the community does not lie within any Urbanized Areas, Bowie-Nacona, et al., states that Station KPXI would provide a 70 dBu signal to more than 50% of the Tyler and Longview, Texas, Urbanized Areas. However, it maintains that Overton is a separate and independent community. In support, Bowie-Nacona, et al., states that Overton has its own local government, consisting of a mayor/city manager/council. Municipal services provided by Overton include police and fire protection, water and sewage treatment and its own independent school district. In addition, it states that Overton has its own local weekly newspaper, post office and zip code, churches, banks, libraries, parks, golf courses, tennis courts and community center. Overton also has several major businesses which employ local residents, such as the Overton Health Care Center and the Overton ISD, an educational facility. Bowie-Nacona, et al., acknowledges that Mount Pleasant, with a population of 12,291 persons, is more populous than Overton, but that Mount Pleasant will retain service from daytime-only AM Station KIMP. However, it states that the fact that Mount Pleasant is larger and will retain only a daytime-only AM station are not a bar to the reallocation, citing Fredericksburg and Helotes, Texas, 10 FCC Rcd 6580 (1995), recons. granted 11 FCC Rcd 22317 (1996). Further, it states that the reallocation of Station KPXI, and the concomitant downgrade to Class C2 status, would enable the station to provide service to an additional 79,279 persons. While Station KPXI, as a Mount Pleasant Class C station provides service to 242,205 persons, Bowie-Nacona, et al., states that it will be able to serve 321,484 persons as an Overton station. It acknowledges that the reallocation would result in a loss of service to 184,477 persons but states that the entire loss area will continue to receive service from five or more fulltime services.

5. Dynamic Broadcasting, Inc., licensee of Station KORQ-FM, requests the substitution of Channel 263C for Channel 264C at Abilene, Texas, and the modification of the station's license to specify the alternate Class C channel at new transmitter site coordinates. Bowie-Nacona, et al., states the change in channel and transmitter site is necessary so that it can increase the tower height and thus increase its coverage area by 6,570.3 square kilometers and serve an additional 24,168 persons.

6. In the joint counterproposal, Bowie-Nacona, et al. proposes the substitution of Channel 291A for Channel 265C3 at Sulphur, Oklahoma, and the modification of the license of Station KFXT, Channel 265C3, Sulphur, to specify operation on Channel 291A at a new site. The licensee of Station KFXT has agreed to the proposed operation on Channel 291A. As background to this matter, in MM Docket No. 91-343, we substituted Channel 265C2 for Channel 265A at Sulphur and modified the Station KFXT license to specify operation on Channel 265C2. 7 FCC Rcd 3182 (1992). Instead of Class C2 facilities, the licensee filed for Class C3 facilities and this application was granted on April 4, 1997 (File No. BPH-960726IC). Technically, under Section 73.3525(h) of the Rules, that application remained pending for 30 days after that grant. The joint counterproposal was filed on April 21, 1997, after the grant date but while the application was still "pending." The joint counterproposal contemplates Station KFXT foregoing operation on Channel 265C3. Since the Channel 265C3 application remained "pending," there was a "dismissal" of a pending application under Section 1.420(j) of the Rules.

In order to avoid a potential abuse of the Commission's processes, Section 1.420(j) requires that the party dismissing its application certify that it has not received any consideration for the dismissal in excess of its legitimate and prudent expenses and provide a copy of any agreement regarding the dismissal of its application. In this regard, the president of the Station KFXT licensee submitted a declaration stating that no consideration is being paid or promised in exchange for the dismissal of its application or foregoing Channel 265C3 facilities. The president further stated that reimbursement is only being paid for its future costs and expenses related to the frequency change and the transmitter site relocation. According to Bowie-Nacona, et al., the change from Channel 265A to Channel 291A will enable Station KFXT to increase the number of people it serves from 16,897 people to 32,132 people because Station KFXT will now be able to operate at a power of 6 kilowatts. Further, while the change in transmitter site will cause a loss of service to 4,215 persons, Bowie-Nacona, et al., states that the entire loss area will continue to receive at least five aural services.

7. Based on the record before us, we find that the public interest would be served by granting the proposal advanced by Bowie-Nacona, et al. The substitution of Channel 264C for Channel 264C3 and the reallocation of the channel from Bowie to Highland Village, will provide the community with its first local aural service and enable Station KRJT to greatly increase the number of people which it serves. Likewise, the substitution of Channel 264C2 for Channel 264C and the reallocation of the channel from Mount Pleasant to Overton will provide that community with its first local aural service and also enable Station KPXI to increase the number of people which it serves. Further, while the move from Mount Pleasant to Overton will cause 145,170 people to lose service, it has been determined that the entire loss area is considered to be well-served as it will continue to receive at least five fulltime aural services. We recognize that neither station presently serves any urbanized areas and that Station KRJT at Highland Village will cover 100% of both the Denton and Lewisville, Texas, urbanized areas and that Station KPXI at Overton will cover 100% of the Tyler and 75% of the Longview, Texas, urbanized areas. However, we believe that the demographic information supplied shows that both communities are independent of the nearby urbanized areas. Both Highland Village and Overton have local governments which provide a variety of municipal services and each have businesses and civic organizations directed to the needs and interests of each community's residents. Both Bowie and Mount Pleasant will retain local aural service from AM stations which are licensed to their individual communities. We also find that the substitution of Channel 263C for Channel 264C at Abilene and the modification of Station KORQ-FM's license to specify the alternate channel to be in the public interest since it will enable the station to relocate its transmitter site and erect a taller tower so that it may increase the number of people which it serves. We will also grant the accommodating change of channel for Station KFXT at Sulphur, Oklahoma, from Channel 265C3 to Channel 291A. In accordance with Commission policy, Station KFXT states that it has reached an agreement concerning reimbursement for the cost of its change of channel and transmitter site with the licensees of Stations KRJT, KPXI and

KORQ-FM.⁵

Technical Summary

8. Channel 264C can be allotted to Highland Village in compliance with the Commission's minimum distance separation requirements with a site restriction of 57.5 kilometers (35.7 miles) northwest to accommodate the petitioner's desired transmitter site.⁶ Channel 264C2 can be allotted to Overton with a site restriction of 22.8 kilometers (14.2 miles) northwest to avoid a short-spacing to the pending application (BPH-970708IB) of Station KDVE for Channel 262A at Tatum, Texas, which effectuates the change of channel and community granted in MM Docket 96-10.⁷ See 12 FCC Rcd 4099 (1977). Although the Tatum application was filed after the counterproposal herein and thus is not entitled to protection against the Overton proposal, it is the Commission's policy to accommodate pending applications whenever possible. In this case, we have identified a non-conflicting transmitter site for the Overton allotment, which according to the staff engineering study, will enable the Overton station to increase the population which it will serve by 3,306 persons. Therefore, we believe the public interest would be served by altering the reference coordinates from that proposed in the counterproposal for the Overton allotment. See Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 8 FCC Rcd, 4743 n.12 (1993). See also, Hardinsburg, Kentucky, 7 FCC Rcd 1746 (1992) (when possible, we have modified a rule making proposal to specify an alternate site or channel to accommodate an application). Channel 263C can be allotted to Abilene with a site restriction of 33.5 kilometers (20.8 miles) southwest to accommodate the licensee's desired transmitter site.⁸ Channel 291A can be allotted to Sulphur in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.7 kilometers (7.9 miles) north to accommodate Station KFXT-FM's desired transmitter site.⁹ Mexican concurrence in the allotment of Channel 263C at Abilene has been received since the community is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 31, 1998, the FM

⁵ In a supplemental pleading requested by the staff, Bowie-Nacona, et al. and DFWU, Inc., state that DFWU did not receive any financial consideration for withdrawing its granted, but not yet final, construction permit for Channel 265C3 at Sulphur (BPH-960726IC).

⁶ The coordinates for Channel 264C at Highland Village are 33-25-03 North Latitude and 97-31-34 West Longitude.

⁷ The coordinates for Channel 264C2 at Overton 32-27-26 North Latitude and 95-05-14 West Longitude.

⁸ The coordinates of Channel 263C at Abilene are 32-21-57 North Latitude and 100-02-58 West Longitude.

⁹ The coordinates for Channel 291A at Sulphur are 34-37-22 North Latitude and 96-58-37 West Longitude.

Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Sulphur, Oklahoma	291A
Abilene, Texas	263C
Bowie, Texas	--
Highland Village, Texas	264C
Mount Pleasant, Texas	--
Overton, Texas	264C2

10. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Bowie-Nacona Broadcasting Company, Inc., for Station KRJT-FM, IS MODIFIED to specify operation on Channel 264C, in lieu of Channel 264C3, and to specify Highland Village, Texas in lieu of Bowie, Texas, as its community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

11. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of East Texas Broadcasting Company, Inc., for Station KPXI, IS MODIFIED to specify operation on Channel 264C2, in lieu of Channel 264C, and to specify Overton, Texas in lieu of Mount Pleasant, Texas, as its community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the licenses of Dynamic Broadcasting, Inc., for Station KORQ-FM, Abilene, Texas, and DFWU, Inc., for Station KFXT, Sulphur, Oklahoma, ARE MODIFIED to specify operation on Channels 263C and 291A, respectively, in lieu of Channels 264C and 265C3, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KORQ-FM's license, BMLH-950925KB, and Station KFXT's license, BLH-791029AN, except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with licenses BMLH-950925KB and BLH-791029AN, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

13. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the licensee of Station KFXT, as follows: KFWU, Inc., 1101 Highway 81 North, Marlow, OK 73055.

14. IT IS FURTHER ORDERED, That the petition of Tom Stamper to allot Channel 291A to Pauls Valley, OK, and the counterproposal of Carter County Broadcasting to allot Channel 291A to Ratliff City, OK, ARE DISMISSED.

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau